

APPLICATION FOR

DISTRICT COURT JUDGE
12TH JUDICIAL DISTRICT

A. PERSONAL INFORMATION

1. Full Name: J Brian Lilletvedt
 - a. What do you commonly go by: Brian
2. Birthdate: September 7, 1953 Are you a U.S. citizen? Yes
3. Home Address: 2240 10th Avenue, Havre, Montana 59501
Phone: 406-265-8619
4. Office Address: P.O. 7152, Havre, Montana
Phone: 406-265-6706
5. Length of residence in Montana: 57 years
6. List your place of residence for the past five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
September 6, 1978---Present	Havre	Montana

B. EDUCATIONAL BACKGROUND

7. List the names and location of schools attended, beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
C.M. Russell High School	Great Falls, MT	May, 1971	High School Diploma
University of Montana	Missoula, MT	June, 1975	Bachelor of Arts Political Science With Honors
University of Montana	Missoula, MT	June, 1978	Juris Doctor

8. List any scholarships, awards, honors and citations you have received:

National Honor Society, C.M. Russell High School

9. Were you a member of the Law Review? If so, please state the title and citation of any article which was published and the subject area of the article.

No.

C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
Supreme Court of Montana	June, 1978
U.S. District Court for Montana	June, 1978
Fort Belknap Community Tribal Court	1980
Chippewa Cree Tribal Court (Rocky Boy's Reservation)	1979
Blackfeet Tribal Court	1994

11. Indicate your present employment (list professional partners or associates, if any).
I am a partner in Bosch, Kuhr, Dugdale, Martin & Kaze, PLLP, in Havre, Montana. The partners are: Bradley E. Dugdale, Sr.; James M. Kaze; Keith A. Maristuen; Stephen R. Brown, Jr. The associates are: Mary Ann Moog; Jennifer E. Forsyth; and Kelsie Whitney.

12. State the name, dates and addresses of all law firms with which you have been associated in practice, and of all governmental agencies or private business organizations in which you have been employed, periods you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
State of Montana Worker's Compensation Court	Law Clerk Judge Hunt	Summer 1978
Altman & Lilletvedt	Law Partner	September 1978 through 1983

Law Offices of Frank Altman	Associate Attorney	January 1984 through June 1984
Bosch, Kuhr, Dugdale, Warner Martin and Kaze	Associate Attorney	July 1984 - 1985
Bosch, Kuhr, Dugdale, Warner Martin and Kaze	Law Partner	1986 - Present

13. If you have not been employed continuously since the completion of your formal education, describe what you were doing.

Does not apply.

14. Describe the nature of your present law practice, listing the major types of law you practice and the percentage each constitutes of your total practice.

I have a general law practice with an emphasis on civil litigation and family law. I represent individuals involved in personal injury claims (5%); I defend individuals, businesses entities and cities involved in personal injury claims (10%); I represent individuals, business entities and cities involved in contract and property disputes (15%); I represent criminal defendants (5%); I represent individuals and business entities in employment matters (10%); I represent individuals involved in domestic disputes and family law matters (40%); I serve as a mediator or settlement master to resolve disputes prior to trial (10%); and I draft wills, and handle some real estate matters (5%).

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

I have always engaged in my private law practice.

16. If you specialize in any field of law, what is your specialty?

I do not have a recognized specialty in any specific area of the law; but I have been trying cases in City Courts, Justice Courts and Districts Courts since the fall of 1978. The first five years of my practice I served as the Public Defender in Hill, Blaine and Liberty County. I handled misdemeanor offenses and major felonies, including deliberate homicide cases, and rape cases. I also have extensive experience in domestic relations and family law cases. In 1984, I no longer bid the Public Defender contract and began to focus my practice on civil litigation.

17. Do you regularly appear in court? Yes

What percentage of your appearances in the past five years were in:

Federal Court	10%
State or local courts of record	80%
Administrative bodies	10%
Other	0%

18. During the past five years, what percentage of your practice has been trial practice? 60%.

19. How frequently have you appeared in court?

Approximately 5 to 8 times per month on average.

20. How frequently have you appeared at administrative hearings?

Less than 1 time per month on average.

21. What percentage of your practice involving litigation has been:

Civil	75%
Criminal	15%
Other (Mediation)	10%

22. Have you appeared before the Montana Supreme Court within the past five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names addresses and phone numbers of all opposing counsel for the five most recent cases.

Yes. *In The Matter of the Adoption of NKL, a Minor*, 149 P.3rd 914, 2006 MT 330 N (2006). This case involved an appeal by the grandfather of the District Court's (Judge David G. Rice) decision granting a guardianship to the grandmother.

The opposing counsel was Chris R. Young. Mr. Young's address and phone number are P.O. Box 2328, Havre, MT 59501; 406-265-4396. I represented the grandmother.

In Re the Marriage of Lyle Lee Colling, Appellant and Jacqueline Colling, Respondent. Supreme Court No. DA-09-0465. This case involved a dispute between Jacque Colling and her former spouse, Lyle Colling over his military retirement benefits and the District Court's (Judge David G. Rice) entry of a default judgment. Following mandatory mediation of Supreme Court appeals, the parties settled and the appeal was dismissed.

Jacqueline Colling was represented by Mark Makin. Mr. Makin's address and phone number are 4703 Almosta Road, Helena, MT 59602; 406-422-8652.

23. State the number of jury trials you have tried to conclusion in the past ten years. 3

24. State the number of non-jury trials you have tried in the past ten years. 5

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the last two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

1. *Rocky Boy Public School District 87-J/L, Hill County, State of Montana v. Bauer Group Architects, LTD*; Cause No. DV-04-051. This matter settled before going to trial.

Opposing Counsel: Ronald F. Waterman, Gough, Shanahan, Johnson, & Waterman, P.O. Box 1715, Helena, Montana 59624, (406) 442-8560.

Presiding Judge: Hon. David G. Rice, (406) 265-5481, ext 231.
2. *Jon Allen Monteaux v. Daniel Arensmeyer; Coca-Cola Bottling Corporation of Los Angeles, California; and Does A through Z*; Cause No. RB-06-cl-236. This matter settled before going to trial.

Opposing Counsel: Charles S. Lucero, P.O. Box 3505, Great Falls, Montana 59403; (406) 771-1515; Jerry D. Guenther, P.O. Box 3505, Great Falls, Montana, (406) 452-2881.

Presiding Judge: Hon. Duane Gopher, (406) 395-4735.
3. *In the Matter of the Guardianship of E.J.T., A Minor Child*; Cause No. DC-08-2. This matter settled before going to trial.

Opposing Counsel: Jeremy S. Yellin, P.O. Box 564, Havre, Montana 59501, (406) 265-3303.

Presiding Judge: Hon. John C. McKeon, (406) 654-1062.
4. *In the Matter of Human Rights Bureau Robert Lindskog v. Northern Telephone Cooperative, Inc.*; Cause No. 1097-2010. This matter settled before going to trial.

Opposing Counsel: Thomas A. Marra; Marra, Sexe, Evenson & Bell, PC, P.O. Box 1525, Great Falls, Montana 59401, (406) 268-1000.

Hearings Officer: Gregory Hanchett, (406) 444-2884.
5. *Warren R. Houle, and Pamela A. Houle v. Unified Disposal Board, a legal entity created by Interlocal Agreement, Hill County, a political subdivision of the State of Montana, and Does 1-3*; Cause No. DV-05-058. This matter settled before going to trial.

Opposing Counsel: Mark F. Higgins, Ugrin, Alexander, Zadick & Higgins, P.C., P.O. Box 1746, Great Falls, Montana 59403, (406) 771-0007.

Presiding Judge: Hon. David G. Rice, (406) 265-5481, ext 231.
6. *In Re the Marriage of Roger K. Terry v. Almeda M. Terry*; Cause No. DR-08-01. This matter settled before going to trial.

Opposing Counsel: Lisa Swan Semansky, Semansky Law Office, P.O. Box 3267, Great Falls, Montana 59403, (406) 771-1584.

Presiding Judge: Hon. David G. Rice, (406) 265-5481, ext 231.

7. *In Re the Marriage of Debbie Dee Shipp v. Todd Alan Shipp*; Cause No. DR-09-033. This matter settled before going to trial.

Opposing Counsel: Jeremy S. Yellin, P.O. Box 564, Havre, Montana 59501, (406) 265-3303.

Presiding Judge: Hon. David G. Rice, (406) 265-5481, ext 231.

8. *In The Matter of the Estate of Stanley M. Knudson*; Cause No. DP-08-47. A jury trial commenced on July 27, 2010 and a verdict was received on July 30, 2010.

Opposing Counsel: Thomas J. Sheehy, Hauge, Sheehy, Harshman, PLLP, P.O. Box 511, Big Sandy, Montana 59520, (406) 378-2103; Kevin C. Meek, Ugrin, Alexander, Zadick & Higgins, P.C., P.O. Box 1746, Great Falls, Montana 59403, (406) 771-0007; John Paul, Law Office of John Paul, P.O. Box 533, Great Falls, Montana 59403, (406) 761-4422; Anne G. Biby, Hash, O'Brien, Biby & Murray PLLP, P.O. Box 1178, Kalispell, Montana 59901, (406) 755-6919.

Presiding Judge: Hon. David G. Rice, (406) 265-5481, ext 231.

9. Hays/Lodgepole School District No. 50, Plaintiff v. CTA, Inc., a Montana corporation; Dick Anderson Construction, Inc., a Montana corporation; Terracon Consultants, Inc. a foreign Corporation; Archambeault and Company, a Montana corporation, Defendant.

Dick Anderson Construction, Inc., a Montana corporation, Third Party Plaintiff v. Charles Welch, d/b/a Welch Construction; and 21 Construction, Inc., a Montana corporation, Third Party Defendants; Cause No. DV-2009-5. This matter settled before going to trial.

Opposing Counsel: Amy Eddy, Bottomly & Eddy, 1230 Whitefish Stage Road, Suite 100, Kalispell, Montana 59901, (406) 752-3303; Neil Westesen, Crowley Fleck, 45 Discovery Drive, Suite 200, Bozeman, Montana 59719-0969, (406) 556-1430; Thomas Buchanan and Jason Buchanan, McDowell, Rice, Smith & Buchanan, Skelly Building, Suite 350, 605 West 47th Street, Kansas City, MO 64112-1905, (816) 753-5400; Maxon R. Davis, Davis, Hatley, Haffeman & Tighe, P.C., P.O. Box 2103, Great Falls, Montana 59403, (406) 761-5243; Todd A. Hammer and Marcel A. Quinn, Hammer, Hewitt, Jacobs & Floch, PLLC, P.O. Box 7310, Kalispell, Montana 59904, (406) 755-2225; Sam S. Painter and Brooke E. Baracker, Elk River Law Office, PLLP, 3317 3rd Avenue North, Billings, Montana 59101, (406) 259-8611.

Presiding Judge: Hon. John C. McKeon, (406) 654-1062.

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the last five years.

I have appeared in three proceedings filed with the Montana Department of Labor and Industry. One claim involved allegations of discrimination based upon race; one claim involved allegations of sexual harassment; and one claim alleged discrimination based upon a perceived disability. I have also appeared in two arbitration matters involving collective bargaining agreements and employment matters. I have appeared in several administrative proceedings before the Montana Child Support Enforcement Division and I have appeared in a matter before the United States of America Merit Systems Protection Board.

27. If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at Continuing Legal Education seminars or otherwise, please state the date, topic and group to which you spoke.

I have not published any material. I made a presentation at a Continuing Legal Education seminar sponsored by the Montana Defense Trial Lawyers and I have made presentations to various groups and organizations in Hill County on legal issues; however, I have not done this within the last five years.

D. PROFESSIONAL AND PUBLIC SERVICE

28. List all the bar associations and legal professional societies of which you are a member and give the titles and dates of any office you have held in such groups, and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

I have been a member of the State Bar of Montana, the Twelfth Judicial District Bar Association and the American Bar Association since 1978.

I belong to the Montana Defense Trial Lawyers association and served as its president between 1999 and 2000. I also belong to the Defense Research Institute and have been a member of the Montana Trial Lawyers Association for many years.

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the past five years. Please state the title and date of any office you have held in each such organization. If you held any offices, please describe briefly your activities in the organization.

1. Havre Rotary Club. I served as President in 2006-2007. As President, I prepared the meeting agenda for our weekly meetings and ran the meetings.
2. Montana State University Northern Foundation. I served as a board member for many years and was President of the Foundation in 2006.
3. Havre Chamber of Commerce. I have been a member of the Havre Chamber of Commerce through my law firm since 1984 and have served as President in 1995.
4. Havre United Way. I served as President in the early nineties.

5. Hill Top Recovery Center. Past president in the mid eighties.

30. Have you ever run for, or held, public office? If so please give the details.

No

E. PROFESSIONAL CONDUCT AND ETHICS

31. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars.

No.

32. Have you ever been found guilty of contempt of court, or sanctioned by any court for any reason? If so, please explain.

No.

33. Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations unless they also included a jail sentence.

No.

34. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty and/or unethical conduct? If so, please give details.

No.

35. Is there any circumstance or event in your personal or professional life which, if brought to the attention of the Commission, the Governor or the Montana Supreme Court, that would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain.

No.

F. BUSINESS AND FINANCIAL INFORMATION

36. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, please give details, including dates.

No.

37. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. State whether you intend to resign such position immediately upon your appointment to District Court Judge.

Does not apply.

38. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization, If so, please identify the source and the approximate percentage of your total income it constituted over the past five years.

No.

39. Do you have any personal relationships, financial interests, investments or retainers which might conflict with the performance of your judicial duties, or which in any manner or for any reason might embarrass you? If so, please explain.

No.

40. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?

Yes.

If not, please explain.

41. Do you have any liens or claims outstanding against you by the Internal Revenue Service?

No.

If yes, please explain.

42. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the last five (5) years? If so, please give details.

No.

43. Please explain your philosophy of public involvement and practice of giving your time to community service.

I believe it is important to be an active member of your community and to participate in community activities. By participating in community activities you gain a better understanding of what is happening in your community and what you can do to help. I have been actively involved with our local school system and have worked with many youth organizations over the years. I have coached youth soccer, basketball, and baseball; announced games at the State Babe Ruth Tournament games; and worked many of the local swimming meets and track meets for Havre High School. I enjoy being around the kids, it's amazing what you can learn from them.

I have been a board member for a number of local organizations and participated in local service clubs. I believe being visible in the community is important for professional growth.

G. WRITING SKILLS

44. In the last five years, explain the extent you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.

I have researched many interesting and complex legal issues during my career. Prior to August of 2009, I did my own research and drafted my own legal briefs. I did electronic legal research through FastCase and Lexis and the old fashioned way, in the library. Our firm hired two associates in August of 2009 and we recently switched from Lexis to Westlaw. I am working with the associates to learn the Westlaw system and have had them do legal research and prepare legal memorandums for me which I use when drafting the final brief.

45. If you have engaged in any other types of "legal writing" in the last five years, such as drafting documents, etc., please explain the type and extent of writing you have done.

Given the nature of my practice I am continually drafting answers, motions, mediation position statements, settlement agreements and releases. I also prepare parenting plans.

46. Please attach a writing sample of no more than ten pages which you have written yourself. A portion of a brief or memorandum is acceptable.

Attached please find my writing sample from the Brief of the Respondents and Cross Appellants in the Montana Supreme Court, *Robert Cartwright, Ferris H. (Buster) Ness and Grace Ness, husband and wife v. The Equitable Life Assurance Society of the United States, and Blaine LeSuer*; Case No. 95-138. Co-counsel, Ward E. Taleff, researched and wrote the first six sections of our brief dealing with evidentiary and procedural issues raised by the defendants. I researched and wrote the last section of the brief dealing with the District Court's deduction of the jury's award of punitive damages.

47. What percentage of your practice for the last five years has involved research and legal writing?

70%

48. Are you competent in the use of Westlaw and/or Lexis?

I am currently learning to use our new Westlaw system and believe I will be able to use it effectively for my legal research.

H. MISCELLANEOUS

49. Briefly describe your hobbies and other interests and activities.

I enjoy most outdoor activities, including golf, boating, bird hunting and riding motorcycles. I grew up participating in these activities with my family and have enjoyed sharing these activities with my wife and son. I also enjoy watching sporting events and try to get to as many of the local sporting events as possible and I usually attend one or two state tournaments each year. I have been a Grizzly supporter since 1971 and I try to take the family to Missoula for as many Grizz games as possible. When my son became interested in music, I found I enjoyed the concerts and plays performed by the high school and now try to attend as many events as I can.

50. Describe the jobs you have held during your lifetime.

I grew up in Great Falls, Montana and my first job was with the City of Great Falls's recreation department as a gymnastic instructor in 1970. During the summer of 1971 I managed the Natatorium swimming pool and during the summer of 1972 I managed the Riverview swimming pool while working for the City.

When I started college in Missoula, I worked as a house boy serving meals at the Kappa House and then went to work for First National Bank. I worked in the mail room and later worked in the Bank's master card authorization center. From 1974 through my graduation from law school in 1978 I worked as a bartender at the Stockman's Bar in Missoula. While in law school, I also interned with the Missoula City Attorney's Office and the ASUM Legal Services at the University.

51. Please identify the nature and extent of any pro bono work that you have personally performed during the past five years.

I have handled several pro bono, marriage dissolutions and custody matters during the last five years. In many cases it is obvious the client will not be able to afford my services and in those cases I reduce my fee on the front end and in some cases only charge the client for out of pocket costs. I have also helped incorporate several youth sporting organizations. The most rewarding pro bono work I have performed involves my work with local high school students. I have represented students in City Court and Justice Court for traffic violations, fish and game violations, and possession tickets. I have also worked with student athletes at Havre High School and MSU-N. I call these kids my "project kids" and to see them graduate is worth the effort.

52. In the space provided, please explain how and why any event or person has influenced the way you view our system of justice.

Bruce Barrett was my supervising attorney when I interned at the ASUM Legal Services in Missoula. Bruce was passionate about the law and aggressively worked to provide the best legal representation for his clients. Bruce was compassionate and taught me how to listen to my clients. He also taught me how to be firm with my clients and to be honest with them. Too many times lawyers seem interested in telling their clients what they want to hear rather than telling them what they need to hear. I use Bruce's

advice whenever I meet with clients. I believe they appreciate my honesty and candor and in turn are honest and open with me.

When I moved to Havre and joined the Bosch, Kuhr, Dugdale firm, I mentored under Justice Warner. Justice Warner taught me not to take myself too seriously and to always remember it was the client's case, not my case. Although, I believe a lawyer must believe in the case and be passionate about it, a lawyer should never let his personal feelings about the case interfere with his legal judgment. The case belongs to the client and the client's decisions must be respected. Justice Warner and I tried a number of cases together and I remember him telling me to always remember it is the client's money and it is their decision on how they want to spend it. You just make sure you give them the best legal advice you can before they make their decision. At times it has been difficult for me to keep my personal feelings in check and not want to take control of the case, when I feel myself starting down this slippery slope, I remember what Justice Warner said and it helps me to represent my client's interest rather than my own.

53. In the space provided, explain the qualities which you believe to be most important in a good District Court Judge.

A trial judge must recognize his role in the judicial process. In a jury trial, the judge has to let the attorneys try their case. He has to be patient and keep his ideas on how the case should be tried to himself. This does not mean he gives control of his courtroom to the lawyers. The judge must always maintain control of his courtroom to ensure both sides receive a fair trial. He must treat the parties and their counsel with respect. A good judge must be a good listener and review the legal arguments involved in the case so he can understand the arguments from both side's perspectives.

The judge's role in a bench trial is substantially different. In a bench trial the litigants know the judge will decide the facts as well as the legal issues. Therefore, the judge must not have preconceived ideas about the parties or their case. When conducting a bench trial, I believe a good judge must always remember he is there to judge the facts and apply the law; not to judge the parties.

We always tell jurors they should use their common sense and their life experiences when they step into the jury room. A judge is no different. If a judge uses common sense and applies the law to the facts of the case his decision will usually be the right one. When the judge's decision makes sense to the parties and the lawyers, it adds some consistency to the process and future litigants will have a better idea of what they face before they go to court.

54. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

Legal precedent is the lynch pin of our judicial system and without it, no one would know what to expect when they went to court. Our legal system is based upon the Constitution and the laws enacted by the legislature and it is not up to the judge to make the law. The judge's responsibility is to apply the law to the facts of the case. When the facts are the same and law has not been changed by the legislature or the Supreme Court, the result should be the same. This creates consistency and stability in our legal system. This does not mean the law is inflexible. It is subject to change; however the change should come from the legislature or the Supreme Court and not the trial court.

The ability to balance the need for consistency with the necessary flexibility required in our legal system depends upon how the law is applied to the specific factual situation. No two cases are exactly the same. Each case has a unique set of facts and the determination of the facts by the jury or the judge should determine the outcome of the case. Trial lawyers, however, are creative. Many changes in our laws over the last 30 years have come about because of changes in technology and the development of new issues and theories of law.

A good example of technologies ability to bring about changes in our existing law involves the emergence of cell phones and computerized mail. Creative defense attorneys have developed new theories to challenge the interception of electronic communications. This requires a judge to re-examine the existing law on search and seizure and adapt the law to the new technology.

55. In the space provided, state the reasons why you are seeking office as a District Court Judge.

I have practiced law in Hill County for 32 years. I have handled homicide cases, wrongful death cases, adoptions, construction claims and almost every type of domestic relations case you can imagine. I have served as a prosecutor and defense counsel in criminal matters. I have represented plaintiffs and defendants in personal injury claims. I have represented men, women, and children in family law matters. I believe my experience and years of practice in the courtroom provide the background needed to be a good district judge.

With the advent of alternative dispute resolution, I have served as a mediator and settlement master in a number of cases. Some cases involved family law matters, some involved property issues, and some involved personal injury and death claims. While I have not been successful in settling all of the cases I have mediated, I believe my experience as a mediator will help should I be appointed judge.

Being a judge is something that has always interested me. When the opportunity arose in the past, I was not in a position to apply for the judgeship. This opening could not have come at a better time for me. My son graduated from high school and has gone off to college and my wife started a new career after 25 years at MSU-N. I am ready for a new challenge and cannot think of anything more rewarding than moving to the bench. Two of my former law partners, Justice Warner and District Judge John McKeon, made a successful transition to the bench and I became excellent judges. I believe my experiences are similar to theirs and I believe I can become an excellent judge as well.

56. What items or events in your career have distinguished you or of which you are most proud?

When I decided to go to law school, I always hoped to have an opportunity to make a positive change in some way. I have represented a number of clients throughout the years and proud to have helped them work their way through some very difficult times in their lives. Working with young people involved with the criminal justice system find their way out of the system and graduate from high school was extremely rewarding.

However, I believe my greatest accomplishment resulted from taking a case for a Native American who fell into a dumpster at one of the rural dumpsites in Hill County. We settled the case and the client was happy to receive the monetary settlement, but he was even happier when Hill County created barriers at

the dumpsites to prevent a similar accident from occurring in the future. It is not often you have the opportunity to bring about a change that will make your community a safer place to live.

57. State any pertinent information reflecting positively or adversely on you which you believe should be disclosed to the Judicial Nomination Commission.

After making my decision to apply for the judge's position, I contacted a number of my colleagues, clients and friends and informed them of my decision. The encouragement I received from everyone convinced me I made the right decision.

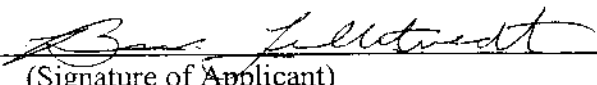
58. Is there any comment you would like to make that might differentiate you from other applicants or that are unique to you that would make you the best District Court Judge candidate?

I have served as a trial attorney in Hill County for 32 years. I have been on both sides of the fence and although I have a reputation for aggressively representing my clients and being passionate about their cases, I believe my opponents will tell you I have always been fair and treated them respectfully.

I. CERTIFICATE OF APPLICANT

I understand the submission of this application expresses my willingness to accept appointment as District Court Judge for the 12th Judicial District of the State of Montana, if tendered by the Governor of the State of Montana, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Canons of Judicial Ethics, if appointed.

October 1, 2010
(Date)


(Signature of Applicant)

Application form approved 7/10/93
Revised 9/15/2009

Criminal action against Equitable is not a viable remedy. ... Punitive damages are the only practical way of making an example of Equitable and deterring the conduct found malicious and fraudulent here. (ff.XXI)

* * *

The jury in this case was conservative by nature, listened carefully to the evidence, and gave no indication that they acted out of passion or prejudice. The jury did not act out of ignorance. They considered the evidence and coolly decided that punishment should be 11/2% of Equitable's net profit for 1993. The jury was convinced, as is the Court, that a sizeable award of punitive damages against both defendants is both warranted and necessary. (ff.XXII) (emphasis supplied)

The Court also made the following FINDINGS OF FACT supporting its decision to reduce the punitive damages awarded by the Jury:

LeSuer has now stopped selling insurance. There is no substantial possibility that he will ever sell insurance again, and therefore there is no need to deter him from further fraudulent insurance practices. ... The circumstance that he will no longer be engaged in the insurance business is such that would tend to reduce the award against him. The lack of knowledge concerning LeSuer's net worth, and thus the amount that would be appropriate, is also a circumstance that would tend to reduce the amount of the award. (ff.XXIII)

Equitable did not discover the extent of LeSuer's wrongdoing until over twenty more complaints were received after he was terminated from service. Equitable made some changes in its practices after making this discovery. ... The changes in procedures for the benefit of insureds are circumstances that would operate to reduce the amount of punitive damages. ... The Court finds that the efforts at correcting the problems undertaken by Equitable justify some reduction in the amount of punitive damages assessed, ... (ff.XXVI)

The findings of fact relied upon by the district court in support of its decision to reduce the punitive damage award

were based upon the same evidence presented to the jury during trial. Judge Warner, despite finding the awards entirely proper on legal and factual grounds, arbitrarily and improperly chose to reduce the award.

Even though LeSuer failed to present evidence of his net worth or the other factors upon which punitives against him were based, the jury was aware of LeSuer's financial position. LeSuer depo. pp.203-204. His counsel argued LeSuer's financial situation to the jury during closing arguments. (Tr., p. 659-660). In view of this record the district court's consideration of the lack of knowledge concerning LeSuer's net worth as a circumstance tending to reduce the amount of the award, (ff.XXIII), was inappropriate. *Gurnsey, supra.*

A defendant's net worth is only one of the facts to be considered when an award of punitive damages is reviewed. *Zugg v. Ramage*, 239 Mont. 292, 779 P.2d 913 (1989). The jury assessed punitive damages against LeSuer of \$30,000.00. The district court found this amount was justified. (ff. IV, XVII) The district court's subsequent reduction of the punitive damage from \$30,000 to \$18,000 was merely an arbitrary reduction unjustified by any fact in the record. The reduction of the Equitable's punitive damage assessment was 34.722%. LeSuer's reduction by the court was 40%. The

reduction cannot even be based on any claimed consistency between the defendants.

As noted by Judge Warner, the evidence of the Equitable's complicity in this deception was compelling. During the period in which LeSuer's deceptions were occurring the Equitable was downsizing, resulting in a reduction in the supervision of its agents. Despite Equitable's earlier knowledge of similar complaints about LeSuer and despite Equitable's knowledge of these improper loans, LeSuer only saw his supervising agent once. This was at an awards banquet attended by many agents.

When other agents complained about LeSuer or similar tactics, the company's response was "let the buyer beware" and "mind your own business". Even LeSuer questioned the effect on customers as a result of the tactics of another agent, only to be told by a District Manager "oh, p_ss on them". (LeSuer depo., p. 30)

LeSuer was able to target Equitable policyholders having older policies with value because as agents retired or terminated their association with the Equitable the company published lists of "orphaned policyholders". With this information LeSuer could contact customers and make his pitch, resulting in a healthy commission when a new policy was ordered based on his representations.

During its investigation of these complaints the Equitable quickly acknowledged that LeSuer's sales representations were improper. A memo by a senior company investigator began:

"here's another policyholder raped by Elaine LeSuer" and included the notation: "this was his m.o.". The Equitable acknowledged in its memos that LeSuer was engaging in a practice known as "stripping" old policies of value and misleading customers.

The jury learned the Equitable's conduct assisted LeSuer in perpetrating these frauds. The Equitable allowed agents to process loans on policies without any approval, consent or knowledge by an insured. Tr., pp. 493-494, 496) In fact, the loan request need not even be in writing by the agent. He could simply call the Equitable and they would honor the request. (Tr., p. 515) The insurance policy itself does not even reference this "right" granted an agent by the Equitable's unwritten, internal, undisclosed procedure. (Tr., p. 524)

The Equitable destroys its records regarding loan requests within 18 months. (Tr., p. 497) Since the first a customer would learn of such a request is 12 months after it is made, once an agent is able to dissuade the customer from pursuing it for 6 months, such as by saying "don't worry about it, it's a mistake", the best evidence is destroyed. (Tr., pp. 514-515) In the case of Ellie Mills, the Equitable allowed LeSuer to process a loan on the policy *after* he had been terminated as an agent! (Tr., pp. 511)

The jury also learned of Equitable's hierarchy and the bureaucratic maze policyholders with problems were required to

go through to pursue problems, with corrective authority being limited to the four regional offices or the national office. (Tr., p. 481) The evidence of the Equitable's failure to monitor LeSuer, to police its agents and to create the processes by which these events occurred was overwhelming. The district court so found in its findings.

After years of litigation, investigations by its own personnel and the depositions of its agents who were responsible for the investigation of these matters, it was during the final part of the trial that the Equitable's witness, at the urging of its counsel, conceded that she was "embarrassed" to learn how this had happened. This attempted act of contrition didn't fool the jury and it shouldn't fool this Court. The Equitable by its disdain for its own customers, its failure to oversee its agents, its abandonment of Montana policyholders and its procedures on policy loans nurtured the atmosphere where this fraud by LeSuer was possible. Its complicity in the destruction of the life insurance of Bob Cartwright and the Nesses is pervasive and justifies the award the jury made.

In its CONCLUSIONS OF LAW, (CL.) the court, citing Section 27-1-221(6), MCA. and *DeBruycker, supra*, stated its review was limited to the amount of the assessment. (CL.I) The purpose of such review is to assure the amount assessed by the jury is not excessive or the result of passion, prejudice, or ignorance. *Honda Motor Co. Ltd. v. Oberg*, 114 S.Ct. 2331, ____ U.S. ____, 129 L. Ed. 2d 336, 343-346 (1994). While the jury's

award in this case is large, it is not excessive or the result of passion, prejudice or ignorance. (CL.III)

Judge Warner correctly concluded that the determination of both liability and amount was left to the jury, with court review of the amount of the assessment. Thus, it is apparent that the jury's judgment is to be given great weight in the court's review. (CL.IV) Yet he then reduced the punitive damages awarded against LeSuer from \$30,000.00 to \$18,000.00 (ff.XXIV) and reduced the punitive damages awarded against the Equitable from \$6,128,345.00 to \$4,000,000.00.

The court cited the sections of the review statute relating to the intent of the defendant in committing the wrong and other circumstances which may operate to increase or reduce, without wholly defeating, punitive damages in support of its decision. Yet in making the reduction the court merely substituted its judgment for that of the jury on these fact issues. The very reasons the district court cited as a basis for reducing the jury award had already been considered by the jury when it made the award in the first place. The judge in reducing the award simply acted as an arbitrary, second jury of one, beyond the duties imposed on him by the statute and the scope of his power as interpreted by this Court. *DeBruecker, supra*.

STANDARD OF REVIEW IN THE DISTRICT COURT

The standard applied by the district court in reviewing a jury's punitive damage award is to review the record for legal sufficiency.

Since the district court determined the jury's award was not based upon passion, prejudice or ignorance and there is substantial evidence in the record to support the jury's award, the district court erred in substituting its judgment for that of the jury's and reducing the award. *Ellinghouse, supra*; *Townsend v. State of Montana*, 227 Mont. 206, 738 P.2d 1274 (1987).

As set forth in the district court's Findings of Fact clear and convincing evidence was presented on the issue of punitive damages. Substantial evidence was also presented in support of the amount awarded by the jury. Judge Warner found the amounts awarded by the jury as to each Defendant were justified by the evidence.

The jury award should be presumed to be correct and must be reinstated when there is substantial evidence to support the award. This Court has not hesitated to reinstate a verdict supported by substantial evidence. *Nelson v. Fairmont Hot Springs Resort, supra* 234 Mont. at 458; *Nelson v. Hartman, supra* 199 Mont. at 300.

CONCLUSION

The appeal of the Equitable and LeSuer should be denied. The legal rulings concerning the statutes of limitation and

evidence tending to prove the misrepresentations of Lesuer were correct. The district court only erred in its reduction of the amount of the jury's award of punitive damages. The court in its Findings of Fact and Conclusions of Law determined as a matter of law the jury's award in this case was neither excessive nor the result of passion, prejudice or ignorance. The record is clear that substantial evidence supports the jury's award. The jury's award of damages must be reinstated.

RESPECTFULLY SUBMITTED this 17th day of July, 1995.

ALEXANDER, BAUCUS, TALEFF & PAUL, P.C.

By Ward E. Taleff
Ward E. Taleff
104 Fourth Street North, Suite 201
P.O. Box 3169
Great Falls, MT 59403
Attorneys for Robert Cartwright

BOSCH, KUHR, DUGDALE, MARTIN & KAZE

By Brian Lilletvedt
Brian Lilletvedt
P. O. Box 7152
Havre, Montana 59501
Attorneys for Ferris H. (Buster)
and Grace Ness